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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-112

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section 100.45 (3) (c) 1., 3. and 4., Stats., require that any person who is selling, offering to sell or otherwise transferring possession of ozone-depleting refrigerant that was removed from a mobile air conditioner but has not been recycled or reclaimed to make various certifications to the department, including a certification that the person has informed each person to whom it sells or otherwise transfers possession of ozone-depleted refrigerant that the ozone-depleted refrigerant has not been recycled or reclaimed. It appears that ch. ATCP 136 does not contain this requirement. These requirements should be added to, or referenced in, s. ATCP 136.10, which governs the buying and selling of refrigerant.

2. Form, Style and Placement in Administrative Code

a. The title of s. ATCP 136.02 in the table of contents should be consistent with the title in the text.

b. The order of s. ATCP 136.01 (6) and (7) should be reversed so that the terms are in alphabetical order.

c. Is a business that holds a business registration certificate under s. ATCP 136.04 required to notify the department if additional registered technicians are employed subsequent to submitting an application for a registration certificate under s. ATCP 136.04 (4)?

d. The material in the Note after s. ATCP 136.04 (2) (a) appears to be substantive and should therefore be placed in the text.

e. Sections ATCP 136.02 (5) (a) and 136.04 (8) (a) should be expanded to set forth procedures for the suspension and revocation of registration certificates and the requirements for reinstatement of certificates. In addition, it is unclear why s. ATCP 136.06 (5) does not contain a parallel provision to the two provisions cited, which would provide for denial of a broker registration certificate for failure to pay a registration or paying with a worthless check.

f. Section ATCP 136.08 (1) (a) should be rephrased to make it clear that an applicant must complete a training program prior to submitting an application for a technician registration certificate. This requirement is set forth in s. ATCP 136.02 (2) (b).

g. In s. ATCP 136.10 (3) (b) 3. and 4., “state” should replace “State.”

h. In s. ATCP 136.12 (1) (intro.), is it the intent of the rule that the department is authorized to deny approval of recovery or recycling equipment even if one of the listed conditions is met? If so, the rule should state the conditions under which the department can deny approval. If not, “may,” in the last sentence of s. ATCP 136.12 (1) (intro.) should be changed to “shall.”

i. In s. ATCP 136.12 (2) (a) 3., the phrase “effectively restricts the use of its certification to” would be less ambiguous if it were changed to “certifies only.”

j. Should a definition or other clarification of the terms “R-12” and “R-134a” be added to s. ATCP 136.12 (3)?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The use of the term “technician” in s. ATCP 136.08 (1) (b) 1. and 2. does not appear to correspond with the definition of that term set forth in s. ATCP 136.01 (20). In addition, should s. ATCP 136.08 (1) (b) 1. require that a person who is exempt from completing a training program must have practiced previously as a certified or licensed technician, rather than simply having practiced as a technician? Also, the first “she” in subd. 1. should be “he.” Finally, s. ATCP 136.08 (1) (b) 2. should contain a term more specific than “technician” or should contain a reference to the federal statute or regulation under which the Environmental Protection Agency grants the type of certification to which the rule refers.

b. Section ATCP 136.08 (2) (b) should be rewritten to clarify what type of “evaluation” must be conducted as part of a technician training program. Are examinations required? Section ATCP 136.08 (3) (f) appears to imply that examinations must be administered. If so, what scores must be achieved to qualify for certification? These points should be clarified.

c. Does s. 93.06 (7), Stats., apply to the withdrawal of the approval of a training program under s. ATCP 136.08 (7) in the same manner it applies to the denial, suspension or revocation of certificates under other sections of the rule?

d. In s. ATCP 136.10 (4) (a) 1., how is the seller or consignor of recycled refrigerant to ascertain what the buyer or consignee will do with the refrigerant in the future? Is the seller or consignor to be held responsible for the actions of the buyer or consignee?

e. Section ATCP 136.12 (1) (intro.) states that the department “may” approve recovery or recycling equipment if one of the listed conditions is met. Should “may” be changed to

“shall”? If this change is not made, the rule should set forth the reasons the department may refuse to grant approval when one of the listed conditions is met.

- f. How long is the approval granted under s. ATCP 136.12 (2) valid?
- g. Chapter ATCP 136 should set forth the penalties for violation of its various provisions.